M.K.B. v. Eggleston

United States District Court for the Southern District of New York
November 7, 2006, Decided ; November 7, 2006, Filed
05 Civ. 10446 (JSR)

Reporter: 2006 U.S. Dist. LEXIS 81704; 2006 WL 3230162

M.K.B., O.P., L.W., M.A., MARIEME DIONGUE, M.E., P.E., ANNA FEDOSENKO, A.I., L.A.M., L.M., DENISE THOMAS, J.Z. and GALINA RYBALKO, on their own behalf, and on behalf of their minor children and all others similar situated, Plaintiffs, -v- VERNA EGGLESTON, as Commissioner of the New York City Human Resources Administration; ROBERT DOAR, as Commissioner of the New York State Office of Temporary and Disability Assistance; and ANTONIA C. NOVELLO, as Commissioner of the New York State Department of Health, Defendants.

Subsequent History: Later proceeding at M.K.B. v. Eggleston, 2012 U.S. Dist. LEXIS 714 (S.D.N.Y., Jan. 3, 2012)

Prior History: M.K.B. v. Eggleston, 445 F. Supp. 2d 400, 2006 U.S. Dist. LEXIS 61347 (S.D.N.Y., 2006)

Counsel: [*1] For M.K.B. on their own behalf, and on behalf of their minor children and all others similarly situated, O.P. on their own behalf, and on behalf of their minor children and all others similarly situated, L.W. on their own behalf, and on behalf of their minor children and all others similarly situated, M.A. on their own behalf, and on behalf of their minor children and all others similarly situated, Marieme Diongue on their own behalf, and on behalf of their minor children and all others similarly situated, M.E. on their own behalf, and on behalf of their minor children and all others similarly situated, P.E. on their own behalf, and on behalf of their minor children and all others similarly situated, Anna Fedosenko on their own behalf, and on behalf of their minor children and all others similarly situated, A.I. on their own behalf, and on behalf of their minor children and all others similarly situated, L.A.M. on their own behalf, and on behalf of their minor children and all others similarly situated, L.M. on their own behalf, and on behalf of their minor children and all others similarly situated, Denise Thomas on their own behalf, and on behalf of their minor children and all others [*2] similarly situated, J.Z. on their own behalf, and on behalf of their minor children and all others similarly situated, Plaintiffs: Caroline Jane Hickey, Jane Greengold Stevens, Yisroel Schulman, New York Legal Assistance Group, New York, NY; Elizabeth Sykes Saylor, Emery Celli Brinckerhoff & Abady, LLP, New York, NY; Jennifer Baum, Legal Aid Society, New York, NY;Ronald Abramson, Russell Winston Jacobs, Hughes Hubbard &
Reed LLP, New York, NY; Scott Alan Rosenberg, Steven R. Banks, The Legal Aid Society, New York, NY.

For Verna Eggleston as Commissioner of the New York City Human Resources Administration, Defendant: Jane Tobey Momo, New York City Law Depart. Office of the Corporation Counsel, New York, NY; Jesse Ira Levine, New York City Law Department, New York, NY.

For Robert Doar as Commissioner of the New York State Office of Temporary and Disability Assistance, Antonia C. Novello as Commissioner of the New York State Department of Health, Defendants: Robert Lewis Kraft, Office of the Attorney General, New York State, New York, NY; Ivan B. Rubin, Office of the NYS Attorney General Eliot Spitzer, New York, NY.

Judges: JED S. RAKOFF, U.S.D.J.

Opinion by: JED S. RAKOFF

Opinion

MEMORANDUM

[*3] JED S. RAKOFF, U.S.D.J.

By Order dated October 13, 2006, this Court denied defendants' motion for reconsideration of the Opinion and Order entered August 29, 2006, *M.K.B. v. Eggleston,* 445 F. Supp. 2d 400, 434 (S.D.N.Y. 2006), full familiarity with which is here assumed. This Memorandum states the reasons for that denial.

A motion for reconsideration is neither an opportunity to advance new facts or arguments nor to reiterate arguments that were previously rejected. *See Charter Oak Fire Ins. Co. v. Nat'l Wholesale Liquidators,* 2003 U.S. Dist. LEXIS 19246 (S.D.N.Y. 2003). Rather, the sole function of a proper motion for reconsideration is to call to the Court's attention dispositive facts or controlling authority that were plainly presented in the prior proceedings but were somehow overlooked in the Court's decision: in other words, an obvious and glaring mistake. *See Caleb & Co. v. E.I. DuPont De Nemours & Co.,* 624 F. Supp. 747 (S.D.N.Y. 1985); *see also*Local Rule 6.3. On this ground alone, the instant motion for reconsideration must be denied, for the defendants have raised nothing that was not

previously considered, and [*4] rejected, by the Court, either explicitly or implicitly.

Most of the arguments defendants advance in the instant motion are directed to this Court's decision to certify a class that includes all lawful permanent residents ("LPRs") who have held that status for less than five years and who have been illegally denied benefits. Defendants contend, first, that one of the two named representatives of that class, Galina Rybalko, is an inadequate representative, and her personal claims moot, because the defendants have now, belatedly, rectified the error that led to the denial of her benefits. But it is settled law of this Circuit that "the fact that the [named] plaintiffs received their unlawfully delayed benefits after the lawsuit was commenced [does] not mean that the action thereby became moot." *See Robidoux v. Celani,* 987 F.2d 931, 938 (2d Cir. 1993); *see also County of Riverside v. McLaughlin,* 500 U.S. 44, 51-52, 111 S. Ct. 1661, 114 L. Ed. 2d 49 (1991). Moreover, even if, under these circumstances, Rybalko did not wish to continue as class representative - and there is no indication of this - co-plaintiff Anna Fedosekno remains an adequate representative of this class. Finally, [*5] even if both named representatives were not adequate for that purpose, the remedy would be to appoint another member of the class as class representative. *See Comer v. Cisneros,* 37 F.3d 775, 799-801 (2d Cir. 1994); *see also Gerstein v. Pugh,* 420 U.S. 103, 110, 95 S. Ct. 854, 43 L. Ed. 2d 54 (1975). There is not the slightest suggestion that such an additional representative could not be found.

In the alternative, the defendants contend that the LPR class certified by the Court was "overbroad" in that it should have been divided into four subclasses. [1] But the alleged distinctions between the four subclasses posited by defendants are irrelevant to this lawsuit, for the wrong of which the LPR class complains - *i.e.,* that "the City had a policy, custom, and usage of denying benefits to . . . lawful permanent residents who had been in that status for less than five years," *M.K.B.,* 445 F. Supp. 2d at 434 - was and is common to all four alleged subclasses. *See, e.g.,* Declaration of K.T., dated Oct. 12, 2005, PP 3, 5; Declaration of Polina Benyiminov, dated Aug. 25, 2005, P6; Declaration of R.R., dated Sept. 29, 2005, P 12; Declaration of W.S., dated Nov. 22, 2005, PP [*6] 14-15; Declaration of Anna Fedosekno, dated Nov. 21, 2005, P 8. Despite the different paths that led them to LPR status, all class members were victims of a "unitary course of conduct by a single system," thereby satisfying the commonality, typicality and other relevant requirements of *Rule 23*. *See, e.g., Marisol A. by Forbes v. Giuliani,* 126 F.3d 372, 377 (2d Cir. 1997); *Rossini v. Ogilvy & Mather, Inc.,* 798 F.2d 590, 598 (2d Cir. 1986).

[*7] Separately, the defendants challenge the inclusion in the certified class of so-called "PROCUL" aliens, *i.e.,* aliens living in the United States with the knowledge and permission or acquiescence of authorities. But their objection raised in the instant motion - to the effect that because PRUCOL aliens are entitled to benefits under state law, but no longer under federal law, the Eleventh Amendment bars including PRUCOL aliens in the certified class - is one the Court previously rejected explicitly. Specifically, the Court held that, since the relief it was ordering (and contemplating) with respect to the PRUCOL class was limited to the City defendant, the Eleventh Amendment was irrelevant. *See M.K.B.,* 445 F. Supp. 2d at 439; *id.* at 440 n.20; *see also Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle,* 429 U.S. 274, 280, 97 S. Ct. 568, 50 L. Ed. 2d 471(1977) ("The bar of the Eleventh Amendment to suit in federal courts extends to States and state officials in appropriate circumstances, but does not extend to counties and similar municipal corporations."); *Holley v. Lavine,* 605 F.2d 638, 644 (2d Cir. 1979).

The Court also considered defendants' other [*8] arguments, but found them wholly lacking in merit, and, accordingly, by Order dated October 13, 2006, denied the motion for reconsideration.

JED S. RAKOFF, U.S.D.J.

Dated: New York, New York

November 7, 2006

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[1] According to defendants, the four appropriate "categories" are: (1) aliens who entered the United States in LPR status and those who obtained LPR status after being in a non-qualified alien status; (2) aliens who entered the United States in a qualified alien status and changed to LPR status thereafter; (3) aliens who entered the country in what is known as a "specially qualified" status, a term used to include refugees, persons granted asylum, persons granted withholding of deportation, Cuban or Haitian entrants, Amerasians and certain veterans who lawfully reside in the United States; and (4) aliens under eighteen years of age who are eligible for food stamps, aliens who receive certain disability payments, and aliens who can be credited with forty qualifying quarters of coverage as defined under Title II of the Social Security Act. Def's. Br. at 4-7.